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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

August 3, 1994

VIA HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

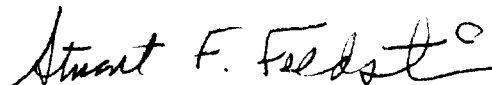
Re: Ex Parte Presentation in MM Docket No. 92-259

Dear Mr. Caton:

Time Warner Cable, pursuant to Section 1.1206(a)(2) of the Commission's Rules, hereby notifies the Commission that it has submitted an Ex Parte letter to each of the five commissioners in the above-referenced matter. Two copies of each letter is attached.

If you have any questions, please contact the undersigned.

Respectfully submitted,



Stuart F. Feldstein
Counsel for Time Warner Cable

Enclosures

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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20541

August 3, 1994

The Honorable Andrew C. Barrett
Federal Communications Commission
1919 M Street, N.W., Room 826
Washington, D.C. 20036

Re: MM Docket No. 92-259

Dear Commissioner Barrett:

This letter is submitted on behalf of Time Warner Cable, a division of Time Warner Entertainment Company, L.P. ("TWC") with regard to a position taken by the National Association of Broadcasters ("NAB") and StarSight Telecast, Inc. ("StarSight") in the above-referenced proceeding.

Sections 614 and 615 of the Cable Act of 1992 require cable operators to carry certain local commercial and noncommercial television stations and, in so doing, to carry the entire signal, including "program-related material carried in the vertical blanking interval or on subcarriers." In interpreting the meaning of the term "program-related," the Commission chose to be guided by the factors enumerated in WGN Continental Broadcasting v. United Video, 685 F.2d 218 (7th Cir. 1982). In particular, one of the factors in WGN requires the VBI material to be "integrally related" to the main program.

NAB, supported by StarSight, has asked the Commission to considerably expand the meaning of "program-related" to encompass not only material in the VBI that is related to the video and audio programming simultaneously being broadcast, but also would cover VBI transmissions that relate to programming in general. The reach of this expanded definition is well illustrated by an examination of the StarSight service. While it does contain some information on the program in progress, the bulk of the available information consists of a sophisticated program guide and a VCR control device, none of which relates to the program

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in progress. Thus, it can be seen that NAB's proposal would stretch the meaning of "program-related" beyond recognition. More importantly, it would clearly be contrary to the intent of Congress to craft a narrow carriage requirement with respect to VBI transmissions.

First, Congress made clear in the legislative history that the term "program-related" was to be narrowly read. For example, Congress "encouraged", but did not require, cable operators to carry future services using the VBI, including "program information and identification." H.Rep.No.628, 102d Cong., 2d Sess.,p.93 (1992). Moreover, the NAB/StarSight proposal cannot be squared with the statutory language of Section 615 which not only limits the mandatory carriage of VBI transmissions on noncommercial television stations to "program-related" material, but also to material which is "necessary for receipt of programming by handicapped persons or for educational or language purposes." 47 U.S.C. Section 535(g)(1).

Second, and just as important, Congress limited the VBI carriage requirement to material transmitted "by the broadcaster." In particular, see the following language from the House Report:

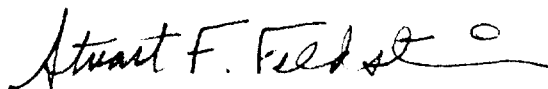
The Committee does not intend that this provision be used to require carriage of secondary uses of the broadcast transmission, including the lease or sale of time on subcarriers or the vertical blanking interval for the creation or distribution of material by persons or entities other than the broadcast licensee.

H.Rep.No.628, 102d Cong., 2d Sess., p.93 (1992). The StarSight service runs directly afoul of this restriction.

In addition to the legal impediments described above, TWC submits that it is bad policy to require cable operators to provide free access to their subscribers for a profit-making entity which is not a Commission licensee and whose service has little or nothing to do with the programming being presented by the licensed broadcaster. Entrepreneurs like StarSight should not be permitted to shoehorn themselves into a stretched interpretation of the law instead of making marketplace arrangements for the distribution of their product. Finally, TWC also believes that mandatory carriage of this type of service is contrary to the First Amendment test recently enunciated by the Supreme Court in the Turner Broadcasting case.

Therefore, TWC strongly urges the Commission not to change its VBI carriage rules in the fashion requested by NAB.

Sincerely

A handwritten signature in black ink, reading "Stuart F. Feldstein" with a stylized flourish at the end.

Stuart F. Feldstein
Counsel for Time Warner Cable